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J1129 U.S. PTO

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PATENT
ATTORNEY DOCKET NO.: 044170-5052-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

J1040 U.S. PTO
09/973956
10/11/01

In re Divisional Application of:)
Ronald W. Mink *et al.*)
Prior Application No.: 09/292,293) Prior Group Art Unit: 1723
For: DEVICE FOR COLLECTION) Prior Examiner: D. Sorkin
AND ASSAY OF ORAL FLUIDS)

DIVISIONAL PATENT APPLICATION TRANSMITTAL UNDER 37 C.F.R. § 1.53(b)

This is a request for filing a patent application under 37 C.F.R. § 1.53(b).

1. This application is a [] Continuation [X] **Divisional** [] Continuation-in-Part patent application under 37 C.F.R. § 1.53(b), of pending prior application no. 09/292,293, filed on April 15, 1999.

Inventors: Ronald W. Mink and Andrew S. Goldstein

For: DEVICE FOR COLLECTION AND ASSAY OF ORAL FLUIDS

2. The papers enclosed are as follows:

35 Page(s) of application, including:

25 pages of description

6 Page(s) of claims; and

1 Page of abstract

3 Sheet(s) of informal drawings containing 4 Figures

3. Amendments

☒ Cancel in this application claims 1-47 in the enclosed copy of prior application before calculating the filing fee.

☒ A preliminary amendment is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)

4. Oath or Declaration

☐ A newly executed (original or copy) oath or declaration is enclosed.

☐ A copy of an oath or declaration from a prior application is enclosed under 37 C.F.R. § 1.63(d). The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied is considered as part of the disclosure of the accompanying application and is hereby incorporated by reference therein.

☒ This Application is being filed under the provisions of 37 C.F.R. § 1.53(f). Applicant(s) await notification from the Patent and Trademark Office of the time set for filing the Declaration and paying the filing fees.

☐ A signed statement deleting inventor(s) named in the prior application is enclosed.

5. Relate Back - 35 U.S.C. § 120

☒ Amend the specification by inserting before the first line the sentence:

"This is a divisional of copending

☒ Application No. 09/292,293 filed on April 15, 1999 which is herein incorporated by reference in its entirety, which claims priority under 35 U.S.C. § 119(e) to provisional application No. 60/079,952, filed MARCH 30, 1998 which is herein incorporated by reference in its entirety.

6. Priority - foreign applications under 35 U.S.C. § 119(a)-(d) or § 365(b) or PCT international applications under 35 U.S.C. § 365(a) designating at least one country other than the U.S.

☐ Priority of the following foreign application(s) is/are claimed:

Country	Application No.	Filed

Certified copy(ies): ☐ is/are attached.

☐ will follow.

☐ was/were filed in prior U.S. Application No. _____ on _____.

7. Assignment

☒ The prior application is assigned of record to Epitope, Inc. recorded 8/19/1999 at Reel/Frame 010174/0024.

☐ An assignment of the invention to _____ and a PTO Form-1595, Recordation Form Cover Sheet, are enclosed.

8. Fee Calculation (37 C.F.R. § 1.16)

CLAIMS FOR FEE CALCULATION				
	Number Filed	Number Extra	at Rate of	Basic Fee Utility \$740.00 Design \$330.00
Total Claims (37 C.F.R. § 1.16(c))	2 - 20	0	\$ 18.00 each =	+ \$ 0
Independent Claims (37 C.F.R. § 1.16(b))	2 - 3	0	\$ 84.00 each =	+ \$ 0
Multiple dependent claim(s), if any (37 C.F.R. § 1.16(d))			\$280.00	+ \$ 0
SUB-TOTAL =				\$ 740.00
Reduction by ½ for filing by a small entity				- \$370.00
TOTAL FILING FEE =				\$370.00

9. Fee Payment

☒ **NO FEE IS BEING PAID BY CHECK OR DEPOSIT ACCOUNT AT THIS TIME.** This application is being filed under the provisions of 37 C.F.R. § 1.53(f). Applicant(s) await notification from the Patent and Trademark Office of the time set for filing the Declaration and paying the filing fees.

☐ Enclosed.

A check(s) in the amount of \$0.00 is enclosed.

☐ The fee for extra claims under 37 C.F.R. § 1.16(d) is not being paid at this time and no authorization is given to charge our deposit account for this fee.

10. Small Entity Status is claimed and

☐ a statement claiming small entity status is enclosed, or

☒ a small entity statement was filed in the prior nonprovisional application and is still proper and desired.

11. ☐ The power of attorney in the prior application is to at least one of the registered practitioners of Morgan, Lewis & Bockius LLP included in the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and all correspondence shall be addressed to that Customer Number.

12. ☒ **Please address all correspondence to Morgan, Lewis & Bockius LLP at Customer Number 009629.** A combined declaration and power of attorney will be filed at a later time consistent with the new address and representation.

13. ☒ **PETITION FOR EXTENSION OF TIME.** If any extension of time is necessary for the filing of this application, including any extension in the prior application, application no. 09/292,293, filed April 15, 1999, for the purpose of maintaining copendency between the prior application and the present application, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to Deposit Account No. 50-0310.

14. ☒ **EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be an **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).
15. Additional papers enclosed:
- ☒ Preliminary Amendment
 - ☐ Information Disclosure Statement and References
 - ☒ Form PTO-1449
 - ☐ Declaration of Biological Deposit
 - ☐ Submission of "Sequence Listing", computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: October 11, 2001

By: Forchisha M. Davis
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Reg. No. 48,371

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